

Richard M. Pachulski, Esq.
Andrew W. Caine, Esq.
(admitted *pro hac vice*)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067-4100
Telephone: (310) 277-6910
Telecopy: (310) 201-0760

Lynn L. Tavenner, Esq. (VA Bar No. 30083)
Paula S. Beran, Esq. (VA Bar No. 34679)
TAVENNER & BERAN, PLC
20 North Eighth Street, 2nd Floor
Richmond, Virginia 23219
Telephone: (804) 783-8300
Telecopy: (804) 783-0178

Counsel to Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In Re:

CIRCUIT CITY STORES, INC., *et al.*,¹

Debtors.

)
)
)
)
)
)
)

Case No. 08-35653-KRH

Chapter 11

(Jointly Administered)

STIPULATION AND AGREED PROPOSED ORDER IN THIRD-PARTY LITIGATION

Brandi M. Evans-Fose (“Ms. Fose”), David G. Fose (“Mr. Fose”) and Alfred H. Siegel, as Trustee (the “Trustee”), and not individually, but solely in his capacity as the Liquidating Trustee of the Circuit City Stores, Inc. Liquidating Trust (the “Trust,” and together with the Trustee, Ms. Fose, and Mr. Fose, the “Parties”), have conferred by and through their respective counsel and, subject to approval of the United States Bankruptcy Court for the Eastern District of

¹ The Debtors in these chapter 11 cases (collectively, the “Case”), along with the last four digits of their respective federal tax identification numbers, are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSSstuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbys Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

Virginia (the “Bankruptcy Court”), HEREBY STIPULATE AND AGREE (the “Stipulation”) AS FOLLOWS:

WHEREAS, on September 10, 2010, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law and Order Confirming Modified Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors* (the “Confirmation Order”), which, *inter alia*, confirmed the *Modified Second Amended Joint Plan of Reorganization* (the “Plan”), and established the Trust; and

WHEREAS, the Trust maintains custody of certain of Circuit City Stores, Inc.’s (together with its affiliated companies, “Circuit City”) books and records; and

WHEREAS, a former Trust employee, Ms. Fose, is a named party in a divorce action adverse to Mr. Fose currently pending in the Circuit Court for the County of Hanover, Virginia, Case No. CL18-2342 (the “Hanover Action”); and

WHEREAS, Mr. Fose, through his divorce counsel, served, with neither notice nor leave of the Bankruptcy Court, the Trust with several Subpoenas *Duces Tecum* pertaining to, *inter alia*, Ms. Fose’s earnings, retirement plans, etc. and issued Subpoenas for Witness (Civil) to Katie Bradshaw (“Ms. Bradshaw”) and Jeff McDonald (“Mr. McDonald”), both in their capacity as Trust employees, and all pertaining to the Hanover Action (collectively, the “Hanover Subpoenas”); and

WHEREAS, the Hanover Subpoenas were issued in contravention of the Confirmation Order notwithstanding that the Trust had twice previously (a) informed Mr. Fose, through counsel, that leave of the Bankruptcy Court (as defined below) was necessary before any subpoenas could be issued and (b) provided to Mr. Fose through counsel the requisite case

authority for the same. Accordingly, upon learning of the violation of the Confirmation Order with the attempted issuance of the Hanover Subpoenas, the Trust filed its *Motion of the Circuit City Stores, Inc. Liquidating Trust to Enforce Terms of Confirmed Plan, for Protection from Foreign Subpoenas, and for Order to Show Cause as to Why Stiles Ewing Powers PC, Michael S. Ewing, Esquire, Mollie C. Barton, Esquire, and David G. Fose Should Not Be Held in Contempt* (the “Contempt Motion”); and

WHEREAS, on December 16, 2019, the Bankruptcy Court entered an Order (the “Contempt Order”) voiding the Hanover Subpoenas and continuing generally the contempt relief sought in the Contempt Motion (the “Remaining Contempt Relief”) subject to the filing of an additional notice of hearing to be held on not less than twenty-one (21) days’ notice; and

WHEREAS, after entry of the Contempt Order, Mr. Fose inquired as to whether the Trustee on behalf of the Trust would agree to allow limited participation of Ms. Bradshaw and Mr. McDonald in the Hanover Action and, thereafter, a stipulation and order was entered by the Bankruptcy Court between the Trust and Mr. Fose in an attempt to address the limited involvement of Trust personnel in the underlying evidentiary issues in the Hanover Action; and

WHEREAS, thereafter, Ms. Fose expressed a desire to have Trust personnel participate in the underlying Hanover Action in a limited, specified manner; and

WHEREAS, this Court entered a *Stipulation and Agreed Order in Third-Party Litigation*, ECF No. 14276, providing for, among other things, the Trust’s limited involvement in the Hanover Action; and

WHEREAS, Mr. Fose and Ms. Fose have represented that the Hanover Action has been resolved and neither will need the Trust's involvement in the Hanover Action or any other matter; and

WHEREAS, based on said representation, the Trust has agreed to withdrawal without prejudice the Remaining Contempt Relief with the reservation of renewing said request to the extent the Trust is brought back into the matter in any fashion; and

WHEREAS, the Parties have entered into this Stipulation and Agreed Order.

NOW THEREFORE, the Parties hereby stipulate and agree as follows, by and through their respective counsel of record, and it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. No Trust Involvement. No Trust representative shall appear and/or testify in the Hanover Action, and/or any other matter between Mr. Fose and Mrs. Fose, without further Order of this Court.

2. Withdrawal of the Remaining Contempt Relief. The Remaining Contempt Relief is hereby withdrawn without prejudice, subject to renewal to the extent the Trust is brought back into the matter in any fashion.

3. Reservation of Rights and Consent to Jurisdiction. The Trust reserves all rights and claims against Mr. Fose and his divorce counsel pertaining to the issuance of the Hanover Subpoenas, the Contempt Motion, and the Contempt Order. Mr. Fose and his divorce counsel reserve all rights, claims and/or defenses, if any, to the Contempt Motion and Contempt Order. Mr. Fose and his divorce counsel and Ms. Fose and her divorce counsel submit to the jurisdiction of the Bankruptcy Court as to the interpretation and enforcement of this Stipulation and Agreed

Oder, the Contempt Motion, and the Contempt Order, and, pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), agree that the Bankruptcy Court shall retain jurisdiction thereto.

4. Immediate Effect. This Stipulation and Agreed Order shall be immediately enforceable and effective and any applicable stay is hereby waived.

Dated: _____
Richmond, Virginia

Kevin R. Huennekens, United States
Bankruptcy Judge

IT IS SO STIPULATED:
BRANDI M. EVANS-FOSE

CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST

/s/ Brian H. Jones (via email dated 12/14/20)
(Permission to affix signature on file)
Brian H. Jones (VSB #34786)
Barnes & Diehl, P.C.
Boulders VI - Suite 200
7401 Beaufont Springs Drive
Richmond, VA 23235
Telephone: 804.796.1000
Facsimile: 804.796.1730
Email: bjones@barnesfamilylaw.com

/s/ Paula S. Beran
Lynn L. Tavenner (VSB No. 30083)
Paula S. Beran (VSB No. 34679)

TAVENNER & BERAN, PLC
20 North Eighth Street, 2nd Floor
Richmond, Virginia 23219
Telephone: 804.783.8300
Facsimile: 804.783.0178
E-mail: ltavenner@tb-lawfirm.com
pberan@tb-lawfirm.com

Counsel Brandi M. Evans-Fose

Richard M. Pachulski (*pro hac vice*)
Andrew W. Caine (*pro hac vice*)
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 11th Floor
Los Angeles, California 90067-4100
Telephone: 310.277.6910
Facsimile: 310.201.0760
E-mail: acaine@pszjlaw.com
Counsel to Circuit City Stores, Inc.
Liquidating Trust

DAVID FOSE

/s/Robert S. Westermann (Permission to affix signature received via email dated 12/14/20)
Robert S. Westermann (VSB No. 43294)
Franklin R. Cragle, III (VSB No. 78398)
HIRSCHLER FLEISCHER, P.C.
The Edgeworth Building
2100 East Cary Street
Post Office Box 500
Richmond, Virginia 23218-0500
Telephone: 804.771.9500
Facsimile: 804.644.0957
E-mail: rwestermann@hirschlerlaw.com
fcragle@hirschlerlaw.com

Counsel for David Fose

CERTIFICATE OF ENDORSEMENT

I hereby certify, under Local Rule 9022-1, that the foregoing proposed Stipulation and Agreed Order has been endorsed and/or served upon all necessary parties.

/s/ Paula S. Beran
Paula S. Beran, Esquire